MIDDLETON, J., in a written judgment, said that an execution was issued against a mortgagor upon a judgment obtained on the covenant. The sheriff did not proceed to enforce this with the degree of harshness required by the execution creditor, and did not leave a bailiff in actual possession. In the meantime the unfortunate debtor was attempting to arrange with the creditor, and finally gave him a chattel mortgage; and the sheriff was instructed not to proceed. The sheriff, assuming that satisfaction had been obtained, withdrew from possession. He sent in his account, including a charge for poundage. The poundage was rightly computed; but, under Rule 683 (2), the sheriff had no right, without taxation, to collect any fees, costs, poundage, or expenses, as the execution creditor had asked for taxation.

What the execution creditor desired was not a taxation—for the taxing officer could only ascertain whether the charges were in accordance with the tariff—but a reduction of the amount charged for poundage under Rule 686. The application to fix the lesser sum under that Rule should be made, not to a taxing officer, but in Chambers.

When the demand for taxation was made, the deputy-sheriff arranged an appointment with the taxing officer and wrote to the execution creditor's solicitor, advising him of the day and hour. At the time appointed, the deputy-sheriff attended, and the plaintiff's solicitor came into the office; he was asked by the officer whether he was attending; but, without answering, he left the room and did not return for some time. The officer in the meantime went on and taxed the bill and issued his certificate. The taxation, in the absence of formal service of a formal appointment, was improper; but it did not follow that it should be set aside. Cranston v. Blair (1893), 15 P.R. 167, shewed that the only right is to a re-taxation, of which, if the bill is reduced, costs will be given—if not reduced, there will be no costs. It was admitted that no change would be made on re-taxation.

The parties agreed to treat this as a motion for reduction of poundage.

In all the circumstances, the poundage should not be reduced. If there should be a sale under the writ of fi. fa. hereafter, there must not be a duplication of this charge.

The result is, that the taxation is not set aside and the poundage is not reduced. So far as the motion was to set aside the taxation, there should be no costs. So far as it was a motion for reduction of the poundage, the sheriff should have $10 costs and such sum (to be fixed by the clerk) as represents the costs of the cross-examination of the sheriff. The last award of costs was made to mark disapproval of the expense incurred in a useless contest.